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JOSEPH F. SPANIOL, JR.
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No. 89-1291

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

ATTA MOSHKELGOSHA,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF
MARYLAND

BRIEF IN OPPOSITION

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as the District Council

14 pp

QUESTIONS PRESENTED

Petitioner's Petition for Certiorari states the questions presented. (Sup. Ct. R. 34.2)

PARTIES

It should be noted that the caption used by Petitioner in his Petition is incorrect in that the Court of Special Appeals of Maryland inadvertently did not incorporate in their caption both the County Council of Prince George's County, sitting as the District Council, and Prince George's County, Maryland (see Opinion and Order of the Circuit Court, Appendix, p. 25) as appellees, and when Petitioner decided to proceed with his appeal pro se, he was not authorized to enter an appeal on behalf of his former co-appellant.

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Statutes

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OPINIONS BELOW

Respondent is satisfied with Petitioner's presentation of the opinions below. (Sup. Ct. R. 34.2)

JURISDICTIONAL STATEMENT

Respondent is satisfied with Petitioner's jurisdiction statement. (Sup. Ct. R. 34.2)

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

Respondent is satisfied with Petitioner's statement of the provisions involved. (Sup. Ct. R. 34.2)

STATEMENT OF THE CASE

Petitioner owns a 43.4 acre parcel of land in Prince George's County, Maryland. At the time that Petitioner purchased it in 1981, the entire parcel was in a floodplain, but upon determining that a portion of that parcel could be reclaimed from the floodplain as developable property Petition filed an application for rezoning of 22 acres of the parcel from the O-S (Open Space) Zone to the C-S-C (Commercial Shopping Center) Zone.

In order for the government to permit rezoning of property in Prince George's County, Maryland, there must be a showing of a mistake in the last comprehensive rezoning, or a change in the neighborhood since the last comprehensive rezoning, and that the proposed zoning is the zone that should be placed on the subject property.

Petitioner argued under both theories, but the change in the neighborhood theory has not been vigorously pursued during the proceedings below. Petitioner's mistake theory involves complicated calculations of acreage.

Applications for rezoning, such as Petitioner's, reach their first significant step in the administrative hearing process when they appear before the Zoning Hearing Examiner. The Zoning Hearing Examiner in the matter at hand disagreed with Petitioner's mistake and change in the neighborhood theories, and recommended that the application for rezoning be denied. Because the Zoning Hearing Examiner's recommendation was appealed to the District Council, it did not become a final decision, and thus Petitioner's application came on for hearing before the County

Council of Prince George's County, sitting as the District Council (Respondent).

The District Council concurred with the opinion of the Zoning Hearing Examiner. Petitioner's application for rezoning was, accordingly, denied. Petitioner has brought this matter through the various appellate levels, beginning with the Circuit Court for Prince George's County, which affirmed the District Council, then to the Court of Special Appeals of Maryland, which also affirmed, and then to this Court after a petition for certiorari to the Maryland Court of Appeals was denied.

Argument

The decision below is based upon issues of state law. After passing through the administrative agencies of the government of Prince George's County, Maryland, Petitioner's application reached the first court of law in its appellate journey. The Circuit Court for Prince George's County, Maryland considered Petitioner's arguments and, finding them lacking, affirmed the decision of the District Council of Prince George's County.

From the Circuit Court, Petitioner appealed this matter to the Court of Special Appeals of Maryland, which also affirmed the District Council's decision. The Court of Special Appeals' affirmance of the District Council constituted the second consideration of this matter by a court of

law in Maryland and this second court reached the same conclusion as the first.

Furthermore, the opinions of the Maryland state courts are not perfunctory. Both the Circuit Court for Prince George's County, Maryland and the Court of Special Appeals of Maryland gave full consideration to the issues and decided them correctly.

Finally, the issues raised by Petitioner are not sufficiently important to warrant this Court's attention, particularly in light of the fact that the issues were not even of sufficient importance for the Maryland Court of Appeals to issue a writ of certiorari upon Petitioner's request. The issues raised turn on the particular facts of this case and are of interest only to the parties to it. The only questions raised are those of state law; no federal questions are at issue.

In conclusion, certiorari should be denied.

CONCLUSION

For the reasons set forth above, the Respondent herein submits that a writ of certiorari should not be granted in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 14th day of March, 1990, three copies each of the foregoing Brief in Opposition were served by mailing them first-class mail, postage prepaid, to Atta Moshkelgosha, 9239 Greenwood Lane, Lanham, MD 20706 and to Michael P. Whalen, Esq., County Attorney, Office of Law, County Administration Building, Fifth Floor, Upper Marlboro, MD 20772.

Joyce A. Birkel
Counsel for Respondent

APPENDIX

Errata Sheet

The following errors should be noted in the Appendix filed by Petitioner:

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32 The last paragraph should read:

For the reasons stated above, it is this 18th day of May, 1988, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that the decision of the County Council of Prince George's County, sitting as the District Council in reference to Zoning Map Amendment Application A-9596 is hereby AFFIRMED.

34 The first line should read:

Case No.: A-9596